Supreme Court, U. S.
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Supreme Court of the United States

October Term, 1979
No. 79-1674

ROBERT J. KONDRAT,
Petitioner,

vs.

PAUL MITROVICH, *et al.*,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF OHIO

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF FACTS

Petitioner's Brief is somewhat misleading as to the nature of this action. The instant action is *not* one for false arrest, malicious prosecution, etc. Rather, it purports to be a taxpayer's action to recover from the defendant all public moneys expended in regard to certain criminal actions against the defendant.

Petitioner filed his Complaint in the Court of Common Pleas, Lake County Ohio alleging that Judge Paul Mitrovich, while the Lake County Prosecutor, wrongfully caused Petitioner to be indicted. A Motion For Summary Judgment was filed based upon the defense of immunity. The Motion was granted by the trial court.

Petitioner then appealed to the Ohio Court of Appeals, Eleventh Appellate District. The Court of Appeals held that the trial court erred in finding that Respondent Mitrovich was absolutely immune from suit. However, the appellate court affirmed the judgment based upon long-established Ohio authorities to the effect that a public officer acting within his authority cannot be held personally liable in a taxpayer's action for errors in judgment. See, e.g., *Crane v. Secoy*, 103 Ohio St. 258 (1921).

Petitioner next filed a Notice of Appeal to the Ohio Supreme Court, alleging in his Notice that the case involved a substantial Constitutional question. Petitioner asserted in his Memorandum In Support Of Jurisdiction that the Court of Appeals violated his right of due process by deciding the case on a ground other than that relied upon by the trial court. The Ohio Supreme Court refused to assume jurisdiction over the matter, finding that there was no substantial Constitutional question.

Petitioner has now filed a Petition For Writ Of Certiorari with this honorable Court. The only Constitutional right involved is the Due Process guarantee of the Fourteenth Amendment. The only alleged violation of that right is the action of the Ohio Court of Appeals in affirming the judgment in favor of the Respondent on a ground independent of that relied upon by the trial court.

REASONS FOR DENYING THE WRIT

A REVIEWING COURT MUST AFFIRM A JUDGMENT OF A LOWER COURT IF IT CAN BE SUPPORTED ON ANY THEORY.

Petitioner's Brief evinces a fundamental misunderstanding of the function of an appellate court. It is axiomatic that an appellate court affirms or reverses judgments, not the reasons therefor. The rule was recognized by this Court in *Ryerson v. United States*, 312 U.S. 405 (1941) (Syllabus 1). The same rule is adhered to by the Ohio courts.

> It is the duty of a reviewing court to affirm the judgment of a lower court if it can be supported on any theory, including a theory different from that of such lower court.
>
> *Newcomb v. Dredge*, 105 Ohio App. 417 (1957) (Syllabus 1).

In the instant case the Petitioner does not attack the validity of the Ohio case law which holds that a public official is not liable for errors in judgment. Neither has the Petitioner ever denied the applicability of that law to this case. Petitioner argues only that the Court of Appeals should have ignored what it knew to be the law and reversed the judgment of the trial court.

The Ohio Court of Appeals had not only the right but indeed the duty to affirm the judgment of the trial court. No right of the Petitioner, Constitutional or otherwise, was violated by the Court of Appeals fulfilling its duty.

CONCLUSION

Petitioner's claims have been fully adjudicated in the courts of Ohio. The Petitioner fails to allege any constitutional violation which would require redress by this Court. It is therefore respectfully requested that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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